


Commercial Practices Working Group Acquisition Advisory Panel

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Preliminary Findings

- 
- Acquisition Planning Process
 - Fostering Competition
 - Commercial Pricing
 - Time & Materials Contracts
 - Current Practices Under FAR Part 12

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Defining Requirements

- Effective services competition in the private sector rests upon a robust requirements building process
- Requirements building tools include:
 - Requests for Information (RFIs)
 - Dedicated internal teams to define deliverables and performance measures
 - Firm internal agreement by all stakeholders on business requirements & service levels
 - Terms and Conditions “baked in”

Planning Process

- Commercial requirements building process usually completed in 4-6 months or less
 - (Commercial buyers use multidisciplinary staff to monitor performance and manage contract)
- Buyers use dedicated and experienced staff
- Consultants with deep credentials and experience frequently used by commercial firms in building requirements
- Consultants prohibited from bidding or participating in any way in the acquisition

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Defining Contract Requirements

- Commercial buyers define content of requirements by the outcome of the work
- Define work by the output
- “If you don’t know your requirements, maybe you should slow down and think about whether you should be buying anything”
- Leave to vendors “how to do it”
 - Allows vendors to bring forth expertise, experience and proprietary approaches

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Observed Preferences

- Head-to-head competition preferred
- Use of fixed price contracts
- Always have 2-3 vendors competing
- Never deal only with one vendor
- Retain right in contract terms to compete new requirements or take them in house
- Recompete “technology heavy” contracts every 3-5 years
 - Necessary to keep up with changing technology

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Commercial Practices (1)

- Provide extensive opportunities for buyer/supplier interchange of information about the buyer's needs and operations before submission of proposals
 - Extensive site access
 - Meetings with buyer staff
 - Workshops
 - Two-way interchange

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Commercial Practices (2)

- Detailed market research performed regarding vendor capabilities
- Commercial practice involves extensive negotiations with vendors in the competition regarding vendor specific solutions
 - Does not require vendors to propose the same solution
 - Allows vendors to bring their expertise to address the buyer's specific issues
- Early narrowing of competitive range

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Commercial Contract Terms

- Extensive use of fixed price contracts
- Balanced contract terms developed through interaction with vendors
- No variance in contract terms except in extraordinary cases for limited reasons
- If vendor perceives risk, vendor must “price it”

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Commercial Pricing

- Primary reliance on competition to achieve reasonable prices
- In limited competition, pricing measured against cost of performing service in house
- Cost-based contracts not used for commercial services, too expensive to administer
- Bedrock principle in pricing commercial contracts is competition within an efficient market

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Time & Materials Contracts

- Seldom used by commercial buyers
- No perceived benefit
- Too resource intensive to manage
- Use limited to situations involving
 - Requirements development
 - Requirements cannot be clearly defined
 - Special expertise required
- Monitored closely when used

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Gov't Practices under FAR Part 12

- Less reliance on competition for pricing than in the private sector
 - Orders placed under IDIQ and GSA schedule contracts do not always achieve price competition
- FAR requires incorporation of vendor terms and conditions based on erroneous assumption that standard industry terms exist
 - This is impediment to normalizing proposals
 - Allows different risk allocation among different proposals

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Gov't Practices under FAR Part 12

- FAR Part 12 is used in sole source contracts
- Items or services are often acquired as “commercial” even when the government is the predominant or only buyer
- Definitions for commercial items and services are broad enough to encompass items and services for which there is no efficient market establishing a fair and reasonable price
 - Agencies use Part 12 to acquire items and services that are not truly commercial

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Competition under GSA Schedule

- Two opportunities to set competitive prices
 - Award or modification of schedule contract
 - Competition at task order level
- Enabling statute deems GSA schedule to be competitive, not always so
- In practice, use of GSA schedule does not ensure that government benefits from pricing established by an efficient commercial market

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Vendor Practices under FAR Part 12

- Vendors often segment their government business from their commercial markets, delinking government pricing from their commercial pricing
- Vendors, even under schedule contracts, not required to disclose their actual commercial prices to the government
 - “Basis of award” allows gaming of pricing
 - MFC clauses are largely unenforceable and have little practical utility

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Pending Findings

- Adequacy of the definition of commercial items and services
- Should commercial services ever be acquired under Part 12 in the absence of competition

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